

**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
Monday, September 20, 2010 – 9:00 a.m. – Room C445 State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Senate Chair  
Rep. Curtis Oda, House Chair  
Sen. Gene Davis  
Sen. Brent H. Goodfellow  
Pres. Michael G. Waddoups  
Rep. James R. Gowans  
Rep. Rebecca D. Lockhart  
Rep. Carol Spackman Moss  
Rep. Merlynn T. Newbold

**Members Absent:**

Sen. Mark B. Madsen

**Staff Present:**

Mr. Arthur L. Hunsaker, Policy Analyst  
Ms. Susan Creager Allred, Associate General Counsel  
Ms. Tracey Fredman, Legislative Secretary

**Note:** A list of others present, a copy of related materials, and an audio recording of the meeting can be found at [www.le.utah.gov](http://www.le.utah.gov).

**1. Committee Business**

Chair Oda called the meeting to order at 9:19 a.m. Sen. Madsen was excused from the meeting.

**MOTION:** Rep. Newbold moved to approve the minutes of the May 13, 2010 meeting with an amendment to show that she was excused. The motion passed unanimously. Rep. Gowans was absent for the vote.

**2. Duration of Contact Lens Prescriptions: Law, Rule, and Practice**

Sen. Stephenson introduced the issue.

Mr. Hunsaker referred committee members to "Utah Optometry Practice Act 58-16a-102. Definitions," which was distributed in the mailing packet, and noted that the Utah Optometry Practice Act states that the expiration date of a contact lens prescription is two years from the date of the prescription unless documented medical reasons require a shorter prescription length.

Ms. Francine Giani, Executive Director, Department of Commerce, reported that since the law was changed in 2003, all citizen complaints involving an optometrist writing prescriptions lasting fewer than two years without documented medical reasons have been resolved when the Division of Occupational and Professional Licensing has contacted the optometrist.

Mr. Clive Watson, O.D., Executive Director, Utah Optometric Association, explained that because contact lenses are worn in direct contact with the eye, they are more hazardous than eye glasses. He explained the importance of a professional eye exam to determine when a prescription should be changed.

Mr. Blaine Bird, O.D., Chair, Legislation, Utah Optometric Association, responded to committee members' questions about potential reasons contact lens wearers may receive recommendations from their practitioners for more frequent eye exams than eye glass wearers would.

In conclusion to the discussion, Ms. Giani said the Department would: 1) put information on its website to remind those applying for license renewal of the two year prescription renewal unless medical reasons for a shorter time are documented; 2) make contact with sellers of contact lenses to see if there are any trends with doctors who are limiting their prescriptions to one year; and 3) share the concerns raised in the discussion with the Utah Optometrist Licensing Board and request board members, which include both optometrists and ophthalmologists, to discuss these concerns with their respective associations. Ms. Giani agreed to report back to the Committee at a future meeting.

### **3. Discussion: Use of "Liberally Construed" in Statute and Rule**

Mr. Hunsaker distributed and reviewed "Liberally Construed, Recent Utah Supreme Court Case and Options" and the Utah Supreme Court ruling in the case of *Anderson v. Bell*, which was filed June 22, 2010. Mr. Hunsaker referred committee members to Section 20A-9-501(3), which was quoted in the court's decision and reads, "The courts shall construe this part liberally so as to give unaffiliated candidates for public office every reasonable opportunity to make their candidacy effective."

Ms. Allred said the court case noted that there is also direction in statute to make administrative rules under that guidance. She noted that the Committee may want to consider reviewing the statutes as well as the administrative rules.

Rep. Lockhart indicated that Speaker Clark has asked her to participate in a House committee that is reviewing the issue and its implications for the Legislature.

**MOTION:** Sen. Davis moved that the Committee take no action but to review the use of the phrase "liberally construed" as used in: 1) proposed administrative rules, and 2) in existing rules on a case by case basis when a concern is raised by a committee member.

**AMENDED MOTION:** Pres. Waddoups moved to amend the motion by removing "take no action" and including that the Committee direct staff to coordinate with the House Committee referred to by Rep. Lockhart, by providing information as to where the terms "strictly construed" and "liberally construed" are used in statute. The motion passed unanimously.

### **4. Committee Business**

Future meetings were scheduled for October 4, 2010 and October 18, 2010 at 9:00 a.m.

### **5. Adjourn**

**MOTION:** Sen. Stephenson moved to adjourn the meeting. The motion passed unanimously.

Chair Oda adjourned the meeting at 10:40 a.m.